



# CITY OF NEWBURGH

Office of the City Manager

83 Broadway, Newburgh, New York 12550

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[www.cityofnewburgh-ny.gov](http://www.cityofnewburgh-ny.gov)

Michael G. Ciaravino, City Manager

February 21, 2018

**VIA REGISTERED MAIL  
AND CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
AND FEDERAL EXPRESS**

Kevin J. O'Toole, Chairman  
Board of Commissioners  
Port Authority of New York and New Jersey  
4 World Trade Center, 150 Greenwich Street  
New York, New York 10007

**Re: Notice of Intent to File Civil Action  
Pursuant to Resource Conservation and Recovery Act, 42 U.S.C. §6972 and  
Clean Water Act, 33 U.S.C. §1365**

Dear Chairman O'Toole:

I submit this Notice Letter on behalf of the City of Newburgh ("City"), located at City Hall, 83 Broadway, Newburgh, New York, 12550, with the telephone number (845)-569-7301. The City is the owner of the property at 660 Little Britain Road, Town of New Windsor, New York (Tax Parcel Id: 4-1-12.2) ("Property"). The Property is the location of Washington Lake Reservoir ("Washington Lake"), which is the City's water supply. Washington Lake receives water from sources including Silver Stream, and its tributaries, Patton Brook, and groundwater recharge ("City Watershed").

Please take notice, as further described below, that on or after ninety (90) days from this notice, in accordance with Resource Conservation and Recovery Act ("RCRA") §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B), and on or after sixty (60) days from the date of this notice, pursuant to Clean Water Act ("CWA") §505(a)(1)(A), 33 U.S.C. §1365(a)(1)(A), the City intends to file a citizen suit against the Port Authority of New York and New Jersey ("PANYNJ") for past and continuing practices at the Stewart International Airport ("Airport"), including discharge(s) ("Discharge(s)"), release(s), spill(s) and/or disposal(s) (together "Disposal(s)") of solid or hazardous waste materials, including PFCs, including but not limited to PFOS, other solid or hazardous waste materials, and/or other hazardous substances, resulting in surface, ground water, soil and sediment contamination ("Contamination"), either with a permit, without a permit, or in violation of a permit, which have led to Contamination at the Airport, Property, Washington Lake, and City Watershed, and which present or may present an imminent and substantial endangerment to health and/or the environment.

## A. Background: Contamination of the Airport, City Watershed and Washington Lake.

PANYNJ operates the Airport at 1180 1st Street, New Windsor, New York 12553, pursuant to a lease with the New York State Department of Transportation, dated on or about November 1, 2007.

PANYNJ discharges stormwater and/or wastewater from the Airport into a tributary of Silver Stream, pursuant to State Pollutant Discharge Elimination System ("SPDES") Permit NY-0234915, and also from the Airport into the City Watershed. Section F of SPDES Permit NY-0234915 prohibits discharges of "contained firefighting runoff, fire training water contaminated by contact with pollutants or containing foam or fire retardant additives." Yet, during the course of PANYNJ's operation of the Airport, it has discharged aqueous film forming foam ("AFFF") containing perfluorinated chemicals ("PFCs"), including but not limited to perfluorooctane sulfonate ("PFOS") and perfluorooctanoic Acid ("PFOA"), in firefighting and training.

PFCs have been identified in surface waters, groundwater, and soil in sampling taken on the Airport, as well as in Lake Washington. Specifically, some of the sample results are as follows:

- June 2016: Combined measure of PFOS and PFOA in soil on the runway near Airport Outfall 3 at a range of 6,680 parts per trillion ("ppt") to 1,845,680 ppt, and total PFCs ranging from 7,400 ppt to 1,897,580 ppt. Combined measure of PFOS and PFOA in soil just north and northeast of Building 142 a range of 6,370 ppt to 596,670 ppt, and total PFCs ranging from 7,730 ppt to 619,140 ppt.
- July 2016: Combined measure of PFOS and PFOA in the surface waters at Airport Outfalls 3, 5, 8, 10, 11, and 13 at a range of 19 ppt to 306 ppt, and total PFCs ranging from 14 ppt to 462 ppt.
- July 2016: PFOS in groundwater north of the runway ranging from 120 ppt to 340 ppt.
- August 2017: PFOS identified in Washington Lake surface water at levels up to 170 ppt. Eleven other PFCs, including PFOA, were detected ranging from 2.4 ppt to 69 ppt. PFCs were also identified in the sediment at the bottom of Lake Washington.

Use and Disposals of AFFF by PANYNJ has led to Discharges of PFOS and other PFCs into the waters of the United States, resulting in the Contamination of surface water and groundwater of the Airport and Washington Lake above the Drinking Water Health Advisory published by the United States Environmental Protection Agency ("EPA") in May 2016, which is 70 ppt for the combined concentration of PFOA and PFOS. See *Lifetime Health Advisories and Health Effects Support Documents for Perfluorooctanoic Acid and Perfluorooctane Sulfonate*, 19 Fed. Reg. 101 (May 25, 2016), which were first released on May 19, 2016<sup>1</sup>. EPA's health advisories warn that drinking water containing PFOS and PFOS above those levels poses adverse human health effects. *Id.* New York State Department of Health blood tests results from approximately 750 City residents indicate that, on average in comparison to the general U.S. population, City residents are in the 95th percentile for PFOS in their blood and higher than the 50<sup>th</sup> percentile for PFOA in their blood.

In October 2016, as a result of the PFOS levels above the EPA Health Advisory Levels at the Airport and in Lake Washington, New York State identified a portion of the Airport as a potential Inactive

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<sup>1</sup> The City switched to an alternate clean water supply prior to EPA's issuance of the May 2016 Health Advisory as a precautionary measure. At the time of the City's switchover, the January 2009 EPA provisional health advisory levels of 200 ppt for PFOS and 400 ppt for PFOA ("Provisional Levels") were still in effect. Neither PFOS nor PFOA had been detected above the Provisional Levels in the City's water supply.



Hazardous Waste Disposal Site (State Superfund Site). On March 3, 2017, New York State also amended Part 597 of the New York State Chemical Bulk Storage regulations by adding PFOA and PFOS to the list of hazardous substances at 6 NYCRR §597.3, and prohibiting the use of AFFF containing PFOA or PFOS by April of 2017. However, New York State has not yet issued standards for PFOA and PFOS, nor have they prohibited the use of AFFF containing PFCs other than PFOA or PFOS. Like other states, it is expected that EPA and New York State will continue to promulgate stricter standards for PFOA and PFOS, and also create standards for all PFCs, as more nationwide tests are completed. Ten other PFCs (in addition to PFOA and PFOS) have also been identified in Lake Washington and the City Watershed.

Although the City stopped supply of water to its residents containing PFCs prior to the issuance of the May 2016 Health Advisory, the source of this Contamination has not been remediated, abated, or fully investigated. The State of New York intends to require the City to provide water from Washington Lake without first requiring remediation of Contamination at the Airport or the abatement of the Disposal of PFCs at or from the Airport. While New York State Department Environmental Conservation has installed a granulated activated carbon ("GAC") filtration system as an interim remedial measure ("IRM") for treatment of Washington Lake water, there is no assurance that the water will be free of all PFCs and safe for public consumption until complete remediation of the Contamination and abatement of the Discharges has occurred. Therefore, PANYNJ's use and Disposals of PFCs created or may present an imminent and substantial threat to the health of residents of the City and/or the environment.

Additionally, as further set forth in Section D, there may be additional sources of Contamination, which the Operators are or should be aware of, that may also be contributing to the Contamination and that may be discovered in the course of further investigation or through the litigation discovery process.

**B. PANYNJ Operations Present or May Present an Imminent and Substantial Endangerment to Health and/or the Environment.**

Please take notice, pursuant to RCRA §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B), that the City intends to bring a civil action against PANYNJ on or after ninety (90) days after the date of this notice, for PANYNJ's past and/or present contribution to the endangerment of health or the environment, and to seek thereby injunctive relief, statutory civil penalties, costs, attorney and expert witness fees, and such additional relief as the Court determines is appropriate. Specifically, the City intends to request a declaratory judgment that the PANYNJ has contributed to such an endangerment; and the following injunctive relief:

1. prohibiting PANYNJ from use or storage of AFFF containing any form of PFCs on the Airport;
2. directing PANYNJ to immediately abate and remediate ongoing Disposal and Discharges of all PFCs and other Contamination, including but not limited to PFOS and PFOA, that may present an imminent and substantial endangerment to health or the environment;
3. directing PANYNJ to immediately install an IRM to prevent PFCs and other Contamination from entering the City Watershed, Washington Lake and the City water supply, including surface water, groundwater, and sediments;
4. directing that all IRMs treat for all PFCs to their Method Detection Levels;
5. directing PANYNJ to fully investigate (including a hydrology study) and remediate the Contamination of the groundwater, surface water, soil and sediments of the Airport, Washington Lake, Silver Stream, and other related water bodies in the City Watershed;
6. directing PANYNJ to pay for costs incurred by the City to continue to receive clean water from the Catskill Aqueduct until all abatement and remediation is complete, and providing safe,



contaminant free water transported from an acceptable source to the City's Water Treatment Plant for filtration during any future shutdown by the New York City Department of Environmental Protection;

7. directing PANYNJ to pay for City's independent consultants to perform independent audits of all IRMs and remedial measures;
8. directing PANYNJ to pay for all interim remedial costs;
9. declaring PANYNJ's SPDES permit null and void as a violation of law for discharging into a Class A waterbody; and prohibiting PANYNJ from obtaining a new SPDES permit until an alternative to AFFF containing PFCs is implemented and an IRM is installed to prevent PFCs from entering the City Watershed and Washington Lake; and
10. directing PANYNJ to provide costs to the City for purposes of providing rebates and/or refunds to consumers/property owners/residents for retroactively purchasing, consuming and bathing in water containing the Contamination.

The suit will allege that Disposal(s) occurred at the Airport, due to PANYNJ's handling, storage, treatment, transportation, release and/or disposal of solid or hazardous wastes. Specifically, the Disposal of AFFF for firefighting and training has resulted in levels of PFOS and PFOA in surface waters of Washington Lake and the Airport above the EPA Drinking Water Health Advisories for PFOA and PFOS published in May 2016, other PFCs in the surface waters and sediments of Washington Lake and the City Watershed. There also may have been historic spills of petroleum and other hazardous substances at the Airport which contributed to the Contamination. The industrial and commercial use of the Airport without the proper controls to avoid contaminating the City Watershed has caused releases of Contamination into the City Watershed, which in turn has contaminated the City's drinking water source, Washington Lake.

The Disposal continues to contaminate soil, surface water, and groundwater at the Airport, Property, City Watershed and Washington Lake. The Contamination, if not remediated, will continue to contaminate soil, surface water, and groundwater at the Airport, Property, the City Watershed, and Washington Lake. The suit will allege that PANYNJ's past and continuing practices at the Airport caused and continue to present, or may present an imminent and substantial endangerment to health and/or the environment.

### **C. PANYNJ Discharges of Pollutants to the City Watershed in Violation of the Clean Water Act.**

Please take notice, pursuant to CWA §505(a)(1), 33 U.S.C. §1365(a)(1), that the City also intends to initiate a civil action against the PANYNJ pursuant to Section 301 of the Clean Water Act, 33 U.S.C. §1311(a), on or after sixty (60) days after the date of this notice. The City will seek statutory civil penalties. In addition, the City intends to seek civil penalties for any additional violations that the City discovers at the Airport in the future, as well as those occurring subsequent to this notice. Further, the City intends to seek injunctive and remedial relief to halt the continuing illegal Discharges, costs, attorney and expert witness fees, and such additional relief as the Court determines may be appropriate.

The suit will allege that PANYNJ has contaminated and continues to contaminate waters of the United States and/or the waters of the State of New York by discharging pollutants, including PFCs, PFOS, and/or other Contamination without a permit and/or in violation of SPDES Permit NY-0234915. The Discharges occurred and continue to occur during the operation of the Airport by PANYNJ. Specifically, Section F of SPDES Permit NY-0234915 prohibits discharges of "contained firefighting runoff, fire training water contaminated by contact with pollutants or containing foam or fire retardant

additives.” However, as described above, AFFF containing PFOS was discharged from the Airport to the surface waters and groundwater at the Property and City Watershed. These Discharges are either still occurring at the present time, or are likely to reoccur in the future. As a result, PANYNJ is and continues to be in violation of the Clean Water Act.

The violations of law described above are based upon the best information currently available to the City. Each of the types of violations is ongoing or reasonably likely to continue, and we expect that the City may identify additional CWA violations. The City intends to sue for all CWA violations, including those yet to be discovered and those committed after the date of this notice. Due to the chronic and persistent nature of PANYNJ’s violations, and PANYNJ’s failure to remediate the Contamination, abate the illegal Discharges, or install a treatment system at the Airport, there is more than a reasonable likelihood of ongoing violations in the future.

#### **D. Additional Sources and Claims.**

There may be additional sources of Contamination, which PANYNJ is or should be aware of, that may also be contributing to the Contamination and that may be discovered in the course of further investigation and through the litigation discovery process. These may form part of the basis for additional claims, without further notice to the PANYNJ. The City may join additional common law and statutory claims with its RCRA and CWA claims, including indemnification and contribution claims arising out of claims made by individuals and/or class claimants against the City.

Neither EPA nor the State of New York have commenced or are diligently prosecuting PANYNJ under RCRA or CWA for the violations and conditions described in this letter.

#### **E. Contact Information of City’s Legal Counsel.**

The City requests that any person receiving this notice direct all inquiries to the City’s legal counsel, who are:

**Knauf Shaw LLP**  
Alan J. Knauf, Esq., and  
Meaghan A. Colligan, Esq., of Counsel  
1400 Crossroads Building  
2 State Street  
Rochester, New York 14614  
Tel. (585) 546-8430  
E-mail: aknauf@nyenvlaw.com;  
mcolligan@nyenvlaw.com

Thank you.

Sincerely,



Michael Ciaravino  
City Manager





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Michael G. Ciaravino, City Manager

February 21, 2018

**VIA REGISTERED MAIL  
AND CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
AND FEDERAL EXPRESS**

Commissioner Paul A. Karas  
New York State Department of Transportation  
50 Wolf Road  
Albany, NY 12232

**Re: Notice of Intent to File Civil Action  
Pursuant to Resource Conservation and Recovery Act, 42 U.S.C. §6972 and  
Clean Water Act, 33 U.S.C. §1365**

Dear Commissioner Karas:

I submit this Notice Letter on behalf of the City of Newburgh ("City"), located at City Hall, 83 Broadway, Newburgh, New York, 12550, with the telephone number (845) 569-7301. The City is the owner of the property at 660 Little Britain Road, Town of New Windsor, New York (Tax Parcel Id: 4-1-12.2) ("Property"). The Property is the location of Washington Lake Reservoir ("Washington Lake"), which is the City's water supply. Washington Lake receives water from sources including Silver Stream, and its tributaries, Patton Brook, and groundwater recharge ("City Watershed").

Please take notice, as further described below, that on or after ninety (90) days from this notice, in accordance with Resource Conservation and Recovery Act ("RCRA") §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B), and on or after sixty (60) days from the date of this notice, pursuant to Clean Water Act ("CWA") §505(a)(1)(A), 33 U.S.C. §1365(a)(1)(A), the City intends to file a citizen suit against the New York State Department of Transportation ("NYSDOT" or "Owner") for past and continuing practices at the Stewart Air National Guard Base ("Base") and the Stewart International Airport ("Airport") (collectively the Base and Airport are referred to as "Facility"), including discharge(s) ("Discharge(s)"), release(s), spill(s) and/or disposal(s) (together "Disposal(s)") of solid or hazardous waste materials, including PFCs, including but not limited to PFOS, other solid or hazardous waste materials, and/or other hazardous substances, resulting in surface, groundwater, soil, and sediment contamination ("Contamination"), either with a permit, without a permit, or in violation of a permit/permits, which have led to Contamination at the Facility, Property, Washington Lake, and City Watershed, and which present or may present an imminent and substantial endangerment to health and/or the environment.

## **A. Background: Contamination of the Facility, City Watershed, and Washington Lake.**

NYSDOT is the owner of the Base, located at 1 Maguire Way, Newburgh, New York 12550, and the Airport, located at 1180 1st Street, New Windsor, New York 12553.

The Base has or has had numerous operators under NYSDOT's control. The New York Air National Guard ("NYANG") and the State of New York operate the Base at 1 Maguire Way, Newburgh, New York 12550, pursuant to License Number DACA51-3-84-61 granted to the State of New York from the United States of America Department of the Air Force ("Air Force") on or about April 1, 1983. The United States of America ("USA"), Air Force, United States Air National Guard ("USANG"), and the Marine Corps Reserve ("Marine Corps") are also operators of the Base, pursuant to the lease from NYSDOT to the United States of America, dated on or about December 31, 1982.

The Airport has at least one operator currently under NYSDOT's control. Port Authority of New York and New Jersey ("PANYNJ") operates the Airport at 1180 1st Street, New Windsor, New York 12553, pursuant to a lease with the NYSDOT, dated on or about November 1, 2007. National Express Group PLC operated the Airport prior to PANYNJ, pursuant to a lease with NYSDOT, dated on or about March 30, 2000. (Collectively, NYANG, State of New York, USA, Air Force, USANG, Marine Corps, PANYNJ, and National Express Group PLC are referred to in this notice as the "Operators.")

Owner and/or Operators Discharge stormwater and/or wastewater from the Facility into the City Watershed, containing perfluorinated chemicals ("PFCs"), including but not limited to perfluorooctane sulfonate ("PFOS"), and other Contamination, either with a permit, without a permit, or in violation of a permit. NYANG discharges stormwater and/or wastewater from the Base into a tributary of Silver Stream, pursuant to State Pollutant Discharge Elimination System Permit ("SPDES") NY-0250457, and also from the Base into Patton Brook and/or otherwise into the City Watershed. PANYNJ discharges stormwater and/or wastewater from the Airport into a tributary of Silver Stream, pursuant to SPDES Permit NY-0234915. Section F of SPDES Permits NY-0250457 and NY-0234915 prohibit discharges of "contained firefighting runoff, fire training water contaminated by contact with pollutants or containing foam or fire retardant additives." Yet, during the course of Owner's and Operators' operation of the Facility, they have discharged aqueous film forming foam ("AFFF") containing PFCs, including but not limited to PFOS and perfluorooctanoic acid ("PFOA"), in firefighting and training.

PFCs have been identified in surface waters, groundwater, and soil in samples taken at the Facility as well as in Lake Washington. Specifically, some of the sampling results are as follows:

### Base

- March 2016 and May 2016: PFOS measured in the surface waters at Base Outfalls A, 2, 3, 17K, and 10 at a range of 110 parts per trillion ("ppt") to 5,900 ppt.
- June 2016: PFOS identified in the groundwater at sampling locations surrounding the apron on the Base property at 21 ppt, 190 ppt, and 3,160 ppt.
- June 2016 and September 2016: PFOS identified in the catch basin water at sample locations surrounding the apron on the Base property ranging from 37 ppt to 3,610 ppt.
- August 2016: PFOS identified in the surface soil at sample locations surrounding the apron on the Base at 320 ppt, 470 ppt, and 5,620 ppt.
- March 2017: PFOS identified in the surface waters of the floor drains at the Base Firehouse at concentrations up to 480,000 ppt.



- September 2017: PFOS, PFOA, and other PFCs identified in nine surface water samples on the Base. PFOS was identified at a range of 37 ppt to 1180 ppt; PFOA was identified at a range of 13 ppt to 520 ppt; total PFCs ranged from 74 ppt to 5,843 ppt.
- September 2017: The total PFCs identified in groundwater on the Base at MW-3 measured at 368 ppt.

#### Washington Lake

- August 2017: PFOS identified in Washington Lake surface water at levels up to 170 ppt. Eleven other PFCs, including perfluorooctanoic acid (“PFOA”) were detected ranging from 2.4 ppt to 69 ppt. PFCs were also identified in the sediment at the bottom of Lake Washington.

#### Airport

- June 2016: Combined measure of PFOS and PFOA in soil on the runway near Airport Outfall 3 at a range of 6,680 ppt to 1,845,680 ppt, and total PFCs ranging from 7,400 ppt to 1,897,580 ppt. Combined measure of PFOS and PFOA in soil just north and northeast of Building 142 at a range of 6,370 ppt to 596,670 ppt, and total PFCs ranging from 7,730 ppt to 619,140 ppt.
- July 2016: Combined measure of PFOS and PFOA in the surface waters at Airport Outfalls 3, 5, 8, 10, 11, and 13 at a range of 19 ppt to 306 ppt, and total PFCs ranging from 14 ppt to 462 ppt.
- July 2016: PFOS in groundwater north of the runway ranging from 120 ppt to 340 ppt.

Use and Disposals by Owner and/or Operators have led to Discharges of PFOS and other PFCs into the waters of the United States, resulting in the Contamination of surface water and groundwater of the Facility and Washington Lake above the Drinking Water Health Advisory published by the United States Environmental Protection Agency (“EPA”) in May 2016, which is 70 ppt for the combined concentration of PFOA and PFOS. *See Lifetime Health Advisories and Health Effects Support Documents for Perfluorooctanoic Acid and Perfluorooctane Sulfonate*, 19 Fed. Reg. 101 (May 25, 2016), which were first released on May 19, 2016<sup>1</sup>. EPA’s health advisories warn that drinking water containing PFOS and PFOA above those levels poses adverse human health effects. *Id.* New York State Department of Health blood tests results from approximately 750 City residents indicate that, on average in comparison to the general U.S. population, City residents are in the 95th percentile for PFOS in their blood and higher than the 50<sup>th</sup> percentile for PFOA in their blood.

In October 2016, as a result of the PFOS levels above the EPA Health Advisory Levels at the Facility and in Lake Washington, New York State declared the Base an Inactive Hazardous Waste Disposal Site (State Superfund Site), and a portion of the Airport a potential Inactive Hazardous Waste Disposal Site. On March 3, 2017, New York State also amended Part 597 of the New York State Chemical Bulk Storage regulations by adding PFOA and PFOS to the list of hazardous substances at 6 NYCRR §597.3, and prohibiting the use of AFFF containing PFOA or PFOS by April of 2017. However, New York State has not yet issued standards for PFOA and PFOS, nor have they prohibited the use of AFFF containing PFCs other than PFOA or PFOS. Like other states, it is expected that EPA and New York State will continue to promulgate stricter standards for PFOA and PFOS, and also create standards for all PFCs, as more nationwide tests are completed. Ten other PFCs (in addition to PFOA and PFOS) have also been identified in Lake Washington and the City Watershed.

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<sup>1</sup> The City switched to an alternate clean water supply prior to EPA’s issuance of the May 2016 Health Advisory as a precautionary measure. At the time of the City’s switchover, the January 2009 EPA provisional health advisory levels of 200 ppt for PFOS and 400 ppt for PFOA (“Provisional Levels”) were still in effect. Neither PFOS nor PFOA had been detected above the Provisional Levels in the City’s water supply.



Although the City stopped supply of water to its residents containing PFCs prior to the issuance of the May 2016 Health Advisory, the source of this Contamination has not been remediated, abated, or fully investigated. The State of New York intends to require the City to provide water from Washington Lake without first requiring remediation of Contamination at the Facility or the abatement of the Disposal of PFCs at or from the Facility. While New York State Department Environmental Conservation has installed a granulated activated carbon ("GAC") filtration system as an interim remedial measure ("IRM") for treatment of Washington Lake water, there is no assurance that the water will be free of all PFCs and safe for public consumption until complete remediation of the Contamination and abatement of the Discharges has occurred. Therefore, Owner's and/or Operators' use and Disposals of PFCs created or may present an imminent and substantial threat to the health of residents of the City and/or the environment.

Additionally, as further set forth in Section D, there may be additional sources of Contamination, which the Owner and Operators are or should be aware of, that may also be contributing to the Contamination and that may be discovered in the course of further investigation or through the litigation discovery process.

**B. Facility Operations Present or May Present an Imminent and Substantial Endangerment to Health and/or the Environment.**

Please take notice, pursuant to RCRA §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B), that the City intends to bring a civil action against Owner on or after ninety (90) days after the date of this notice for Owner's past and/or present contribution to the endangerment of health or the environment, and to seek thereby injunctive relief, statutory civil penalties, costs, attorney and expert witness fees, and such additional relief as the Court determines is appropriate. Specifically, the City intends to request a declaratory judgment that the Owner has contributed to such an endangerment, and the following injunctive relief:

1. prohibiting Owner or Operators from use or storage of AFFF containing any form of PFCs at the Facility;
2. directing Owner to immediately abate and remediate ongoing Disposal and Discharges of all PFCs and other Contamination, including but not limited to PFOS and PFOA, that may present an imminent and substantial endangerment to health or the environment;
3. directing Owner to immediately install an IRM to prevent PFCs and other Contamination from entering the City Watershed, Washington Lake and the City water supply, including surface water, groundwater, and sediments;
4. directing that all IRMs treat for all PFCs to their Method Detection Levels;
5. directing Owner to fully investigate (including a hydrology study) and remediate the Contamination of the groundwater, surface water, soil and sediments of the Facility, Washington Lake, Silver Stream, and other related water bodies in the City Watershed;
6. directing Owner to pay for costs incurred by the City to continue to receive clean water from the Catskill Aqueduct until all abatement and remediation is complete, and providing safe, contaminant free water transported from an acceptable source to the City's Water Treatment Plant for filtration during any future shutdown by the New York City Department of Environmental Protection;
7. directing Owner to pay for City's independent consultants to perform independent analysis of all IRMs and remedial measures;



8. directing Owner to pay for all interim remedial costs;
9. declaring NYSANG's and PANYNJ's SPDES permits null and void as a violation of law for discharging into a Class A waterbody; and prohibiting NYSANG and PANYNJ from obtaining a new SPDES permit until an alternative to AFFF containing PFCs is implemented and an IRM is installed to prevent PFCs from entering the City Watershed and Washington Lake; and
10. directing Owner to provide costs to the City for purposes of providing rebates and/or refunds to consumers/property owners/residents for retroactively purchasing, consuming and bathing in water containing the Contamination.

The suit will allege that Disposal(s) occurred at the Facility due to Owner's and/or Operators' handling, storage, treatment, transportation, release and/or disposal of solid or hazardous wastes. Specifically, the Disposal of AFFF for firefighting and training has resulted in levels of PFOS and PFOA in surface waters and sediments of Washington Lake and the Facility above the EPA Drinking Water Health Advisories for PFOA and PFOS published in May 2016, other PFCs in the surface waters and sediments of Washington Lake and the City Watershed. There may have also been historic spills of petroleum and other hazardous substances at the Facility which contributed to the Contamination. The industrial and commercial use of the Facility without the proper controls to avoid contaminating the City Watershed has caused releases of Contamination into the City Watershed, which in turn has contaminated the City's drinking water source, Washington Lake.

The Disposal continues to contaminate soil, surface water, and groundwater at the Facility, Property, City Watershed and Washington Lake. The Contamination, if not remediated, will continue to contaminate soil, surface water, and groundwater at the Facility, Property, City Watershed, and Washington Lake. The suit will allege that Owner's and/or Operators' past and continuing practices at the Facility caused and continue to present, or may present an imminent and substantial endangerment to health and/or the environment.

### **C. Owner's and/or Operators' Discharges of Pollutants to the City Watershed in Violation of the Clean Water Act.**

Please take notice, pursuant to CWA §505(a)(1), 33 U.S.C. §1365(a)(1), that the City also intends to initiate a civil action against the Owner, pursuant to Section 301 of the Clean Water Act, 33 U.S.C. §1311(a), on or after sixty (60) days after the date of this notice. The City will seek statutory civil penalties. In addition, the City intends to seek civil penalties for any additional violations that the City discovers at the Facility in the future, as well as those occurring subsequent to this notice. Further, the City intends to seek injunctive and remedial relief to halt the continuing illegal Discharges, costs, attorney and expert witness fees, and such additional relief as the Court determines may be appropriate.

The suit will allege that Owner and/or Operators have contaminated and continue to contaminate waters of the United States and/or the waters of the State of New York by discharging pollutants, including PFCs, PFOS, and/or other Contamination without a permit and/or in violation of SPDES permits NY-0250457 and NY-0234915. The Discharges occurred and continue to occur during the operation of the Facility by Owner and Operators. Specifically, Section F of the SPDES Permits prohibit discharges of "contained firefighting runoff, fire training water contaminated by contact with pollutants or containing foam or fire retardant additives." However, as described above, AFFF containing PFOS and other PFCs were discharged from the Facility to the surface waters and groundwater at the Property and City Watershed. These Discharges are either still occurring at the present time, or are likely to reoccur in the future. As a result, Owner is and continues to be in violation of the Clean Water Act.



The violations of law described above are based upon the best information currently available to the City. Each of the types of violations is ongoing or reasonably likely to continue, and we expect that the City may identify additional CWA violations. The City intends to sue for all CWA violations, including those yet to be discovered and those committed after the date of this notice. Due to the chronic and persistent nature of Owner's violations, and Owner's failure to remediate the Contamination, abate the illegal Discharges, or install a treatment system at the Facility, there is more than a reasonable likelihood of ongoing violations in the future.

**D. Additional Sources and Claims.**

There may be additional sources of Contamination, which Owner is or should be aware of, that may also be contributing to the Contamination and that may be discovered in the course of further investigation and through the litigation discovery process. These may form part of the basis for additional claims, without further notice to the Owner. The City may join additional common law and statutory claims with its RCRA and CWA claims, including indemnification and contribution claims arising out of claims made by individuals and/or class claimants against the City.

Neither EPA nor the State of New York have commenced or are diligently prosecuting Owner under RCRA or CWA for the violations and conditions described in this letter.

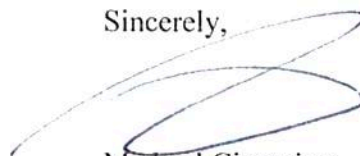
**E. Contact Information of City's Legal Counsel.**

The City requests that any person receiving this notice direct all inquiries to the City's legal counsel, who are:

**Knauf Shaw LLP**  
Alan J. Knauf, Esq., and  
Meaghan A. Colligan, Esq., of Counsel  
1400 Crossroads Building  
2 State Street  
Rochester, New York 14614  
Tel. (585) 546-8430  
E-mail: [aknauf@nyenvlaw.com](mailto:aknauf@nyenvlaw.com);  
[mcolligan@nyenvlaw.com](mailto:mcolligan@nyenvlaw.com)

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Ciaravino", is written over a horizontal line.

Michael Ciaravino  
City Manager



cc: SENT BY REGISTERED MAIL AND CERTIFIED MAIL RETURN RECEIPT REQUESTED  
TO:

Scott Pruitt, EPA Administrator  
Peter D. Lopez, EPA Region 2 Administrator  
Basil Seggos, NYSDEC Commissioner

SENT BY US MAIL TO:

Martin Brand, NYSDEC Deputy Commissioner, Division of Materials  
Andrew M. Cuomo, New York State Governor  
Howard A. Zucker, M.D., New York Department of Health  
Attorney General Eric Schneiderman, Esq.  
City Council, City of Newburgh  
Judy Kennedy, Mayor of City of Newburgh  
Michelle Kelson, Esq.  
George Rodenhausen, Esq.  
Alan J. Knauf, Esq.  
John J. Walsh, Esq.





# CITY OF NEWBURGH

Office of the City Manager

83 Broadway, Newburgh, New York 12550

(845) 569-7301/Fax (845) 569-7370

[www.cityofnewburgh-ny.gov](http://www.cityofnewburgh-ny.gov)

Michael G. Ciaravino, City Manager

February 21, 2018

**VIA REGISTERED MAIL  
AND CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
AND FEDERAL EXPRESS**

Governor Andrew M. Cuomo  
State of New York  
NYS State Capitol Building  
Albany, NY 12224

**Re: Notice of Intent to File Civil Action  
Pursuant to Resource Conservation and Recovery Act, 42 U.S.C. §6972 and  
Clean Water Act, 33 U.S.C. §1365**

Dear Governor Cuomo:

I submit this Notice Letter on behalf of the City of Newburgh ("City"), located at City Hall, 83 Broadway, Newburgh, New York, 12550, with the telephone number (845) 569-7301. The City is the owner of the property at 660 Little Britain Road, Town of New Windsor, New York (Tax Parcel ID: 4-1-12.2) ("Property"). The Property is the location of Washington Lake Reservoir ("Washington Lake"), which is the City's water supply. Washington Lake receives water from sources including Silver Stream, and its tributaries, Patton Brook, and groundwater recharge ("City Watershed").

Please take notice, as further described below, that on or after ninety (90) days from this notice, in accordance with Resource Conservation and Recovery Act ("RCRA") §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B), and on or after sixty (60) days from the date of this notice, pursuant to Clean Water Act ("CWA") §505(a)(1)(A), 33 U.S.C. §1365(a)(1)(A), the City intends to file a citizen suit against New York State ("Owner") for past and continuing practices at the Stewart Air National Guard Base ("Base") and the Stewart International Airport ("Airport") (collectively the Base and Airport are referred to as "Facility"), including discharge(s) ("Discharge(s)"), release(s), spill(s) and/or disposal(s) (together "Disposal(s)") of solid or hazardous waste materials, including PFCs, including but not limited to PFOS, other solid or hazardous waste materials, and/or other hazardous substances, resulting in surface, ground water, soil, and sediment contamination ("Contamination"), either with a permit, without a permit, or in violation of a permit/permits, which have led to Contamination at the Facility, Property, Washington Lake, and City Watershed, and which present or may present an imminent and substantial endangerment to health and/or the environment.



## **A. Background: Contamination of the Facility, City Watershed, and Washington Lake.**

The New York State Department of Transportation ("NYSDOT"), an instrumentality of the State of New York, is the owner of the Base, located at 1 Maguire Way, Newburgh, New York 12550, and the Airport, located at 1180 1st Street, New Windsor, New York 12553.

On or about April 1, 1983, New York State was granted a license, License Number DACA51-3-84-61, from the United States of America Department of the Air Force ("Air Force") to operate the Base, located at 1 Maguire Way, Newburgh, New York 12550, by the New York Air National Guard ("NYANG"). The United States of America ("USA"), Air Force, United States Air National Guard ("USANG"), and the Marine Corps Reserve ("Marine Corps") are also operators of the Base under the control of the State of New York pursuant to the lease from the NYSDOT to United States of America, dated on or about December 31, 1982.

The Airport has at least one operator currently under the State of New York's control. Port Authority of New York and New Jersey ("PANYNJ") operates the Airport at 1180 1st Street, New Windsor, New York 12553, pursuant to a lease with the NYSDOT, dated on or about November 1, 2007. National Express Corporation operated the Airport prior to PANYNJ, pursuant to a lease with NYSDOT, dated on or about March 30, 2000. (Collectively, NYANG, State of New York, USA, Air Force, USANG, Marine Corps, PANYNJ, and National Express Corporation are referred to as the "Operators.")

Owner and/or Operators discharge or have discharged stormwater and/or wastewater from the Facility into the City Watershed containing perfluorinated chemicals ("PFCs"), including but not limited to perfluorooctane sulfonate ("PFOS"), and other Contamination either with a permit, without a permit, or in violation of a permit. NYANG discharges stormwater and/or wastewater from the Base into a tributary of Silver Stream, pursuant to State Pollutant Discharge Elimination System Permit ("SPDES") NY-0250457, and also from the Base into Patton Brook and/or otherwise into the City Watershed. PANYNJ discharges stormwater and/or wastewater from the Airport into a tributary of Silver Stream, pursuant to SPDES Permit NY-0234915. Section F of SPDES Permits NY-0250457 and NY-0234915 prohibit discharges of "contained firefighting runoff, fire training water contaminated by contact with pollutants or containing foam or fire retardant additives." Yet, during the course of Owner's and Operators' operation of the Facility, they have discharged aqueous film forming foam ("AFFF") containing PFCs, including but not limited to PFOS and perfluorooctanoic acid ("PFOA"), in firefighting and training.

PFCs have been identified in surface waters, groundwater, and soil in samples taken at the Facility as well as in Lake Washington. Specifically, some of the sampling results are as follows:

### Base

- March 2016 and May 2016: PFOS measured in the surface waters at Base Outfalls A, 2, 3, 17K, and 10 at a range of 110 parts per trillion ("ppt") to 5,900 ppt.
- June 2016: PFOS identified in the groundwater at sampling locations surrounding the apron on the Base property at 21 ppt, 190 ppt, and 3,160 ppt.
- June 2016 and September 2016: PFOS identified in the catch basin water at sample locations surrounding the apron on the Base property ranging from 37 ppt to 3,610 ppt.



- August 2016: PFOS identified in the surface soil at sample locations surrounding the apron on the Base at 320 ppt, 470 ppt, and 5, 620 ppt.
- March 2017: PFOS identified in the surface waters of the floor drains at the Base Firehouse at concentrations of up to 480,000 ppt.
- September 2017: PFOS, PFOA, and other PFCs identified in nine surface water samples on the Base. PFOS was identified at a range of 37 ppt to 1180 ppt; PFOA was identified at a range of 13 ppt to 520 ppt; total PFCs ranged from 74 ppt to 5,843 ppt.
- September 2017: The total PFCs identified in groundwater on the Base at MW-3 measured at 368 ppt.

#### Washington Lake

- August 2017: PFOS identified in Washington Lake surface water at levels up to 170 ppt. Eleven other PFCs, including perfluorooctanoic acid ("PFOA") were detected ranging from 2.4 ppt to 69 ppt. PFCs were also identified in the sediment at the bottom of Lake Washington.

#### Airport

- June 2016: Combined measure of PFOS and PFOA in soil on the runway near Airport Outfall 3 at a range of 6,680 ppt to 1,845,680 ppt, and total PFCs ranging from 7,400 ppt to 1,897,580 ppt. Combined measure of PFOS and PFOA in soil just north and northeast of Building 142 at a range of 6,370 ppt to 596,670 ppt, and Total PFCs ranging from 7,730 ppt to 619,140 ppt.
- July 2016: Combined measure of PFOS and PFOA in the surface waters at Airport Outfalls 3, 5, 8, 10, 11, and 13 at a range of 19 ppt to 306 ppt, and total PFCs ranging from 14 ppt to 462 ppt.
- July 2016: PFOS in groundwater north of the runway ranging from 120 ppt to 340 ppt.

Use and Disposals by Owner and/or Operators have led to Discharges of PFOS and other PFCs into the waters of the United States, resulting in the Contamination of surface water and groundwater of the Facility and Washington Lake above the Drinking Water Health Advisory published by the United States Environmental Protection Agency ("EPA") in May 2016, which is 70 ppt for the combined concentration of PFOA and PFOS. *See Lifetime Health Advisories and Health Effects Support Documents for Perfluorooctanoic Acid and Perfluorooctane Sulfonate*, 19 Fed. Reg. 101 (May 25, 2016), which were first released on May 19, 2016<sup>1</sup>. EPA's health advisories warn that drinking water containing PFOS and PFOA above those levels poses adverse human health effects. *Id.* New York State Department of Health blood tests results from approximately 750 City residents indicate that, on average in comparison to the general U.S. population, City residents are in the 95th percentile for PFOS in their blood and higher than the 50<sup>th</sup> percentile for PFOA in their blood.

In October 2016, as a result of the PFOS levels above the EPA Health Advisory Levels at the Facility and in Lake Washington, New York State declared the Base an Inactive Hazardous Waste Disposal Site (State Superfund Site), and a portion of the Airport a potential Inactive Hazardous Waste Disposal Site. On March 3, 2017, New York State also amended Part 597 of the New York State Chemical Bulk Storage regulations by adding PFOA and PFOS to the list of hazardous substances at 6 NYCRR §597.3, and prohibiting the use of AFFF containing PFOA or PFOS by April of 2017. However, New York State has not yet issued standards for PFOA and PFOS, nor have they prohibited the use of AFFF

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<sup>1</sup> The City switched to an alternate clean water supply prior to EPA's issuance of the May 2016 Health Advisory as a precautionary measure. At the time of the City's switchover, the January 2009 EPA provisional health advisory levels of 200 ppt for PFOS and 400 ppt for PFOA ("Provisional Levels") were still in effect. Neither PFOS nor PFOA had been detected above the Provisional Levels in the City's water supply.



containing PFCs other than PFOA or PFOS. Like other states, it is expected that EPA and New York State will continue to promulgate stricter standards for PFOA and PFOS, and also create standards for all PFCs, as more nationwide tests are completed. Ten other PFCs (in addition to PFOA and PFOS) have also been identified in Lake Washington and the City Watershed.

Although the City stopped supply of water to its residents containing PFCs prior to the issuance of the May 2016 Health Advisory, the source of this Contamination has not been remediated, abated, or fully investigated. The State of New York intends to require the City to provide water from Washington Lake without first requiring remediation of Contamination at the Facility or the abatement of the Disposal of PFCs at or from the Facility. While New York State Department Environmental Conservation has installed a granulated activated carbon ("GAC") filtration system as an interim remedial measure ("IRM") for treatment of Washington Lake water, there is no assurance that the water will be free of all PFCs and safe for public consumption until complete remediation of the Contamination and abatement of the Discharges has occurred. Therefore, Owner's and/or Operators' use and Disposals of PFCs have created or may present an imminent and substantial threat to the health of residents of the City and/or the environment.

Additionally, as further set forth in Section D, there may be additional sources of Contamination, which the Owner and Operators are or should be aware of, that may also be contributing to the Contamination and that may be discovered in the course of further investigation or through the litigation discovery process.

**B. Facility Operations Present or May Present an Imminent and Substantial Endangerment to Health and/or the Environment.**

Please take notice, pursuant to RCRA §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B), that the City intends to bring a civil action against Owner and Operator on or after ninety (90) days after the date of this notice for Owner and Operator's past and/or present contribution to the endangerment of health or the environment, and to seek thereby injunctive relief, statutory civil penalties, costs, attorney and expert witness fees, and such additional relief as the Court determines is appropriate. Specifically, the City intends to request a declaratory judgment that the Owner and Operator contributed to such an endangerment; and the following injunctive relief:

1. prohibiting Owner and Operator from use or storage of AFFF containing any form of PFCs at the Facility;
2. directing Owner and Operator to immediately abate and remediate ongoing Disposal and Discharges of all PFCs and other Contamination, including but not limited to PFOS and PFOA, that may present an imminent and substantial endangerment to health or the environment;
3. directing Owner and Operator to immediately install an IRM to prevent PFCs and other Contamination from entering the City Watershed, Washington Lake and the City water supply, including surface water, groundwater, and sediments;
4. directing that all IRMs treat for all PFCs to their Method Detection Levels;
5. directing Owner and Operator to fully investigate (including a hydrology study) and remediate the Contamination of the groundwater, surface water, soil and sediments of the Facility, Washington Lake, Silver Stream, and other related water bodies in the City Watershed;
6. directing Owner and Operator to pay for costs incurred by the City to continue to receive clean water from the Catskill Aqueduct until all abatement and remediation is complete, and providing safe, contaminant free water transported from an acceptable source to the City's Water Treatment



- Plant for filtration during any future shutdown by the New York City Department of Environmental Protection;
7. directing Owner and Operator to pay for City's independent consultants to perform independent analysis of all IRMs and remedial measures;
  8. directing Owner and Operator to pay for all interim remedial costs;
  9. declaring NYSANG's and PANYNJ's SPDES permits null and void as a violation of law for discharging into a Class A waterbody; and prohibiting NYSANG and PANYNJ from obtaining a new SPDES permit until an alternative to AFFF containing PFCs is implemented and an IRM is installed to prevent PFCs from entering the City Watershed and Washington Lake; and
  10. directing Owner and Operator to provide costs to the City for purposes of providing rebates and/or refunds to consumers/property owners/residents for retroactively purchasing, consuming and bathing in water containing the Contamination.

The suit will allege that Disposal(s) occurred at the Facility due to Owner's and/or Operators' handling, storage, treatment, transportation, release and/or disposal of solid or hazardous wastes. Specifically, the Disposal of AFFF for firefighting and training has resulted in levels of PFOS and PFOA in surface waters of Washington Lake and the Facility above the EPA Drinking Water Health Advisories for PFOA and PFOS published in May 2016, other PFCs in the surface waters and sediments of Washington Lake and the City Watershed. There also may have been historic spills of petroleum and other hazardous substances at the Facility which contributed to the Contamination. The industrial and commercial use of the Facility without the proper controls to avoid Contamination of the City Watershed has caused releases of Contamination into the City Watershed, which in turn has contaminated the City's drinking water source, Washington Lake.

The Disposal continues to contaminate soil, surface water, and groundwater at the Facility, Property, City Watershed and Washington Lake. The Contamination, if not remediated, will continue to contaminate soil, surface water, and groundwater at the Facility, Property, the City Watershed, and Washington Lake. The suit will allege that Owner and/or Operators' past and continuing practices at the Facility caused and continue to present, or may present an imminent and substantial endangerment to health and/or the environment.

#### **C. Owner's and/or Operators' Discharges of Pollutants to the City Watershed in Violation of the Clean Water Act.**

Please take notice, pursuant to CWA §505(a)(1), 33 U.S.C. §1365(a)(1), that the City also intends to initiate a civil action against the Owner and Operator, pursuant to Section 301 of the Clean Water Act, 33 U.S.C. §1311(a), on or after sixty (60) days after the date of this notice. The City will seek statutory civil penalties. In addition, the City intends to seek civil penalties for any additional violations that the City discovers at the Facility in the future, as well as those occurring subsequent to this notice. Further, the City intends to seek injunctive and remedial relief to halt the continuing illegal Discharges, costs, attorney and expert witness fees, and such additional relief as the Court determines may be appropriate.

The suit will allege that Owner and/or Operators have contaminated and continue to contaminate waters of the United States and/or the waters of the State of New York by discharging pollutants, including PFCs, PFOS, and/or other Contamination without a permit and/or in violation of SPDES permits NY-0250457 and NY-0234915. The Discharges occurred and continue to occur during the operation of the Facility by Owner and Operators. Specifically, Section F of the SPDES Permits prohibits discharges of "contained firefighting runoff, fire training water contaminated by contact with pollutants or containing



foam or fire retardant additives.” However, as described above, AFFF containing PFOS and other PFCs were discharged from the Facility to the surface waters and groundwater at the Property and City Watershed. These Discharges are either still occurring at the present time, or are likely to reoccur in the future. As a result, Owner and Operator is and continues to be in violation of the Clean Water Act.

The violations of law described above are based upon the best information currently available to the City. Each of the types of violations is ongoing or reasonably likely to continue, and we expect that the City may identify additional CWA violations. The City intends to sue for all CWA violations, including those yet to be discovered and those committed after the date of this notice. Due to the chronic and persistent nature of Owner and Operators’ violations, and Owner and Operators’ failure to remediate the Contamination, abate the illegal Discharges, or install a treatment system at the Facility, there is more than a reasonable likelihood of ongoing violations in the future.

#### **D. Additional Sources and Claims.**

There may be additional sources of Contamination, which Owner and Operator is or should be aware of, that may also be contributing to the Contamination and that may be discovered in the course of further investigation and through the litigation discovery process. These may form part of the basis for additional claims, without further notice to the Owner. The City may join additional common law and statutory claims with its RCRA and CWA claims, including indemnification and contribution claims arising out of claims made by individuals and/or class claimants against the City.

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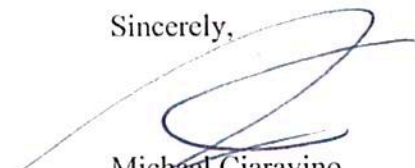
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Rochester, New York 14614  
Tel. (585) 546-8430  
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mcolligan@nyenvlaw.com

Thank you.

Sincerely,



Michael Ciaravino  
City Manager

cc: SENT BY REGISTERED MAIL AND CERTIFIED MAIL RETURN RECEIPT REQUESTED  
TO:  
Scott Pruitt, EPA Administrator  
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Martin Brand, NYSDEC Deputy Commissioner, Division of Materials  
Andrew M. Cuomo, New York State Governor  
Howard A. Zucker, M.D., New York Department of Health  
Attorney General Eric Schneiderman, Esq.  
City Council, City of Newburgh  
Judy Kennedy, Mayor of City of Newburgh  
Michelle Kelson, Esq.  
George Rodenhausen, Esq.  
Alan J. Knauf, Esq.  
John J. Walsh, Esq.